

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

TURNER INDUSTRIES GROUP, LLC

Employer

and

**BATON ROUGE BUILDING &
CONSTRUCTION TRADES COUNCIL,
AFL-CIO**

Petitioner

Case No. 15-RC-8596

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held on April 6-7, 2005, before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Parties stipulated on the record that during the past twelve (12) months, the Employer purchased and received at its Geismar, Louisiana site goods and raw materials valued in excess of \$50,000 directly from points outside the state of Louisiana. Based upon this stipulation, the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

I. ISSUES

The Baton Rouge Building & Construction Trades Council, AFL-CIO (herein the Petitioner) filed the petition in this matter seeking to represent a unit comprised of all boilermakers, carpenters, ironworkers, laborers, millwrights, painters, pipefitters, and welders employed by Turner Industries Group, L.L.C. (herein the Employer) at its BASF Project in Geismar, Louisiana; excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act, and DMS employees. The Petitioner amended its petition at the hearing to include cement masons in the unit. The record reflects that the Petitioner seeks to represent employees who were historically included in the bargaining unit represented by the Petitioner at the BASF project plants in Geismar, Louisiana. Scaffold builders have been included in the historical unit. Electricians and Insulators have not been part of the historical unit. The Petitioner expressly seeks to exclude electricians from the unit. The Petitioner does not seek to represent insulators but is not opposed to their inclusion in the unit if found appropriate by the Board.

There are two issues to be decided in this matter. The central issue involves the Employer's contention that the petitioned-for historical unit of approximately sixty-seven (67)² employees comprised of four (4) boilermakers, five (5) carpenters, nineteen (19) scaffold builders, two (2) ironworkers, three (3) laborers, one (1) millwright, eight (8) painters, twelve (12) pipefitters, nine (9) welders, and four (4) cement masons is an inappropriate unit for collective-bargaining. The Employer contends that the only appropriate unit would include all of its approximately one hundred seventy (170) employees working at the BASF Geismar site, including all of the employees sought by the Petitioner, but also the electricians and insulators referred to collectively as the Alliance Contract Services ("ACS") employees and all Daily Maintenance Support ("DMS") employees, also known as Daily Support Team ("DST") employees. The Employer asserts that employees in the disputed electrician and insulator classifications, and DST employees, share a community of interest with employees in the petitioned-for unit that warrants their inclusion in the unit.

The Employer and the Union, herein the Parties, stipulate and I find that the six (6) equipment mechanic operators employed by the Employer are excluded from any unit found appropriate as they are and have been represented by the International Union of Operating Engineers, Local 406 since November 30, 2004. Additionally, the Parties agree and I find that the Site Manager and all individuals designated as Supervisors exercise independent judgment in making work assignments and effectively recommending discipline and are statutory supervisors that are excluded from any unit found appropriate. Further, the Parties stipulate and I find that all individuals designated as Planner/Scheduler and Zone Planner/Coordinator are salaried employees that do not share a community of interest with the petitioned-for hourly employees and are excluded from any unit found appropriate.

The secondary issue involves the Employer's contention that it is not engaged in the construction industry, and that therefore, the *Daniel/Steiny* formula is not applicable in determining voter eligibility.

¹ The parties stipulated at the hearing that the names of the Employer and the Petitioner are as they appear in the caption.

² Site Manager Danny Price used the term carpenters and scaffold builders interchangeably in his testimony.

II. DECISION

Based on the entire record in this proceeding and for the reasons set forth below, I find that the petitioned-for historical unit, including scaffold builders, is an appropriate unit under Section 9(b) of the Act.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 15 in the following unit:

All boilermakers, carpenters, scaffold builders, ironworkers, laborers, millwrights, painters, pipefitters, welders, and cement masons employed by the Employer at its BASF Geismar, Louisiana project; excluding all electricians, insulators, DST employees, office clerical employees, guards, professional employees and supervisors as defined in the Act.

Further, IT IS ORDERED in addition to those employees in the unit who were employed during the payroll period immediately preceding the date of this Decision and Direction of Election, all employees performing work in the unit set forth above are eligible to vote if they have been employed at BASF for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and who have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election hereinafter directed, and who have not been terminated for cause or quit voluntarily prior to completion of the last job for which they were hired.

III. RECORD EVIDENCE AND ANALYSIS

In reaching my determination that the petitioned-for historical unit, which includes scaffold builders and excludes electricians, insulators, and DST employees, is an appropriate unit for the purposes of collective-bargaining, I considered a community-of-interest analysis. Additionally, I considered whether there are present any compelling circumstances that warrant disturbing the historical bargaining unit in this case. My determination is consistent with the principle that “[i]t is well settled that the existence of significant bargaining history weighs heavily in favor of a finding that a historical unit is appropriate, and that the party challenging the historical unit bears the burden of showing that the unit is no longer appropriate.” *Canal Carting, Inc.*, 339 NLRB 969, 970 (2003).

A. Operations and Bargaining History at BASF

The record evidence reflects that dating back to at least 1958, the Petitioner has represented employees at the BASF chemical plants located in Geismar, Louisiana (hereinafter "BASF"). In the 1980s, the Petitioner represented employees at BASF who were employed by National Maintenance Corporation, referred to herein as National Maintenance.

The record discloses that on May 11, 1990, National Maintenance executed a collective-bargaining agreement with the Petitioner in which it recognized the Petitioner as the bargaining representative for “all maintenance employees.” Thereafter, in 1995, at the request of BASF, National Maintenance created the job classification of multi-skilled mechanic to better meet the needs of BASF. Subsequently, on September 1, 1995, National Maintenance executed another

collective-bargaining agreement with the Petitioner. The recognition clause of the agreement included “all maintenance employees” and specifically excluded “all multi-skilled employees assigned to Direct Manufacturing Support Teams (DMS).” On May 31, 1996, National Maintenance executed another collective-bargaining agreement with the Petitioner in which all multi-skilled employees assigned to DMS were again specifically excluded. Likewise, collective-bargaining agreements executed by National Maintenance and the Petitioner on December 23, 1996 and October 31, 2001 specifically excluded multi-skilled DMS employees. National Maintenance and the Petitioner also executed a collective-bargaining agreement on February 30, 1998; however, the agreement as contained in the record does not include a recognition clause.

Some time during 2000, National Maintenance evolved into International Maintenance Corporation, referred to herein as IMC, a subsidiary of Turner Industries Holding Company L.L.C. However, the record does not contain any documentation reflecting how or when National Maintenance became IMC. Notably, even after 2000, the Petitioner executed a collective-bargaining agreement with National Maintenance on October 31, 2001 that covers work at BASF.

Like National Maintenance, IMC also recognized the Petitioner as the bargaining representative for its employees at BASF. The most recent collective-bargaining agreement between IMC and the Petitioner became effective June 7, 2004. The agreement provided that it did not “extend to construction work or any work other than maintenance.” Pursuant to the agreement, IMC recognized the Petitioner as the “exclusive bargaining representative for all maintenance employees employed by [IMC], excluding all office clerical employees, guards, watchmen and supervisors as defined by the National Labor Relations Act, and all multi-skill employees assigned to Direct Manufacturing Teams (DMS),” The agreement also provided that the Petitioner “will be the primary source of manpower” and that when hiring employees to work turnarounds, IMC “will notify the [Petitioner] of the number of applicants required from each Local Union.” IMC then did acquire its turnaround employees through the union hall. Many of the employees IMC hired to work turnarounds were former turnaround employees who were recalled. The Petitioner provided the turnaround employees, but the employees still had to be “hired in” through IMC’s personnel department. As part of the process, Danny Price, who was the Site Superintendent for IMC, sent labor requisitions, which contained the employee’s name, craft, rate of pay, and report date, to the personnel department.

The record evidence reflects that in 2004, IMC lost its contract to perform the maintenance work at BASF to a non-union contractor. BASF awarded the contract to Turner Company L.L.C., referred to herein as Turner, on an open-shop basis. Turner is also a subsidiary of Turner Industries Holding Company L.L.C. Thereafter, on November 8, 2004, IMC and the Petitioner mutually agreed to terminate the June 7, 2004 collective-bargaining agreement. As part of the Petitioner’s agreement to terminate the collective-bargaining agreement, all IMC employees covered by the terminated collective-bargaining agreement received a \$200.00 severance payment and the opportunity to work with Turner. Forty-two (42) of the fifty-five (55) former IMC employees accepted Turner’s employment offer and began working with Turner without any break in service.

As employees for Turner, the forty-two employees no longer paid into the Petitioner’s benefit program, but were offered Turner’s short-term and long-term disability insurance, Blue

Cross/Blue Shield health insurance, dental and eye insurance, and 401(k) savings plan. The record evidence does not reflect any changes in the nature of the work performed by employees. Further, the record evidence does not expressly disclose what hourly rate Turner paid to the former IMC employees. I note that the record reflects IMC paid its represented employees an hourly rate of \$19.15 per hour plus an additional ninety-five cents (\$0.95) per hour for health insurance.

On November 19, 2004, Turner executed a contract with BASF to perform work “consisting of certain maintenance and/or construction tasks or procedures, or to accomplish certain maintenance or construction results” at BASF on a non-union basis. Turner assumed responsibility for performing all maintenance and/or construction tasks at BASF, including electrical work that was previously done by Davis International Electrical Company and insulation work that was previously done by Petrin Corporation. Turner purchased Davis International Electrical Company on November 11, 2004 and Petrin Corporation on December 20, 2004. Turner, as it did with the former IMC employees, hired the electricians formerly employed by Davis Electrical Company and the insulators formerly employed by Petrin Corporation. Turner completed its transition of employees from IMC on about December 21, 2004.

As of, at least, December 31, 2004, Turner Industries Holding Company L.L.C., referred to herein as Turner Holding, was also the parent company of 1) Harmony L.L.C., 2) Harmony Industrial Maintenance L.L.C., 3) IMC, 4) International Piping Systems L.L.C., 5) Nichols Construction Company L.L.C., 6) Scafco L.L.C., 7) Turner International Piping Systems L.L.C., 8) Turner International L.L.C., 9) Turner Industrial Maintenance L.L.C., 10) Turner Industrial Technical L.L.C., and 11) Turner Industrial Service L.L.C. Turner and IMC, however, were the only subsidiary companies of Turner Holding actually at BASF as of December 31, 2004.

Effective January 1, 2005, Turner Holding changed its name to Turner Industries Group L.L.C., the Employer in this case. Simultaneous with the name change, Turner, along with IMC, Harmony L.L.C., Harmony Industrial Maintenance L.L.C., International Piping Systems L.L.C., Nichols Construction L.L.C., Scafco L.L.C., and Turner International Piping Systems L.L.C., merged into the Employer. The effect of the merger was in name only and did not in any way affect the benefits or pay rates of employees working for the respective former subsidiaries of Turner Holding.

Additionally, the Employer became the parent company of Turner International L.L.C. and Turner Industrial Maintenance L.L.C. Turner Industrial Technical L.L.C. and Turner Industrial Services L.L.C. merged to form Turner Specialty Services L.L.C., which also became a subsidiary company of the Employer. As of January 1, 2005, the Employer, not IMC or Turner, holds the contract to perform work at BASF.

B. The Employer’s Current Operation at BASF

The Employer is a time and material contractor that provides maintenance support services for various chemical plants, including BASF. BASF is a complex of eleven (11) chemical plants situated on 2600 acres. The Employer is responsible for performing maintenance work that is necessary to keep BASF operational. The Employer also performs

“small cap” projects at BASF. Small cap projects are projects valued at up to ten million dollars and involve modifying existing equipment to improve BASF’s efficiency and productivity. The Employer maintains a core workforce of approximately 210 employees on a daily basis that performs the maintenance support services and the “small cap” projects. The work performed by the Employer at BASF includes the following tasks: carpentry work, structural steel erection, concrete work, drill shafts/piling, excavation, road repair, building repairs, plumbing, welding, boilermaking, pipe fabrications, pipefitting and pipe erection, and general labor.

In addition to providing daily maintenance support and performing “small cap” projects, the Employer also works “turnarounds” and “outages” at BASF. Turnarounds are scheduled projects that require production in a designated section of BASF to be partially or fully shut down during the completion of preventative maintenance or structural modifications. The average duration of a turnaround project is two (2) weeks. Outages, which are similar to turnarounds, are unscheduled projects that become necessary due to operational emergencies. Historically, there have been twenty (20) to thirty (30) turnarounds and outages per year at BASF.

The record discloses that when performing outage work, the Employer normally uses its core workforce to complete the work. During turnarounds, the Employer, when necessary, requires its core workforce to work overtime. Additionally, the Employer may supplement its core workforce with “turnaround employees.” The “turnaround employees” are hired through the Employer’s personnel office. As part of their hiring process, “turnaround employees” must score at least a seventy percent (70%) on the Employer administered skill assessment test to be considered certified in a designated craft. Further, the Employer informs the “turnaround employees” that their employment is limited to the duration of the turnaround. Nonetheless, the record evidence reflects that the Employer uses “turnaround employees” to replace under achieving employees in its core workforce or to fill vacancies in the core workforce.

The record reflects that at the time of the hearing, the Employer had performed one turnaround in February 2005. For this turnaround, which lasted about two weeks, the Employer hired one-hundred (100) “turnaround employees” to complement its core workforce. Upon completion of the turnaround, the Employer retained some of the “turnaround employees,” which included insulators, a pipefitter, and four to six other employees certified in one of the Mechanical Department crafts as set forth below.

The Employer has organized its operation at the facility into two sections: Alliance Contract Services (“ACS”) and Daily Maintenance Support (“DMS”), also known as Daily Support Team (“DST”). Site Manager Danny Price oversees both the ACS and DST sections. The ACS section has department supervisors, planner/schedulers, and foremen. The DST section has zone supervisors, zone planner/coordinators, and foremen. The Parties stipulate and I find that the foremen are hourly paid employees who work with tools of the trade and are to be included in any unit found appropriate.

The ACS section is organized into four departments comprised of approximately seventy (70) employees: Civil, Insulation/Paint, Mechanical, and Electrical. Each employee in the ACS section, except laborers, is required to possess skill certification in at least one craft. Employees gain the required skill certification by scoring at least 70% on a skill assessment test

administered by the Employer. Journeyman level ACS employees are paid an hourly wage of \$17.80 per hour.

The Civil Department consists of approximately thirty-one (31) employees: five (5) carpenters, three (3) laborers, nineteen (19) scaffold builders and four (4) cement masons. Scott Cassard is the Supervisor. Danny Guitreau is the Planner/Scheduler for the Civil and the Insulation/Paint Departments.

The Insulation/Paint Department consists of approximately thirty-one (31) employees, including twenty-three (23) insulators and eight (8) painters. Kelly Cortez is the Supervisor.

The Mechanical Department consists of approximately twenty-eight (28) employees: four (4) boilermakers, two (2) ironworkers, (1) millwright, twelve (12) pipefitters, and nine (9) welders. James Guice is the Supervisor. Larry Wellman and Steven Brassett serve as the Planner/Schedulers for the Mechanical and the Electrical Departments.

The Electrical Department consists of approximately sixteen (16) employees, including fifteen (15) Electricians and one (1) Instrument Tech. Pete Baker is the Supervisor.

The record reflects that equipment mechanic operators are also considered a part of the ACS section. As noted above, they are represented by the International Union of Operating Engineers, Local 406 and are to be excluded from any unit found appropriate. I note that the equipment mechanic operators are paid the same \$17.80 hourly wage as the petitioned-for journeyman level ACS employees.

In 1995, National Maintenance Corporation created a multi-skilled mechanic job classification. The multi-skilled employees were assigned to work as Direct Manufacturing Support Teams (DMS). Currently, the Employer continues to employ multi-skilled employees who are required to attain skill certifications in at least three crafts. The multi-skilled employees presently are assigned to work in the Daily Support Team ("DST") section.

Whereas the ACS employees report to departments on a daily basis, DST employees report to one of the five (5) assigned zones and typically function within that zone on a day-to-day basis. Additionally, "nesters," which are ACS employees certified in only one craft, specifically painters, scaffold builders, and insulators, are assigned to each of the five zones and, during this assignment, report to the designated DST Supervisor. Although the "nesters" are assigned to the DST section, they are not paid the same hourly wage as the DST employees, which range from \$19.05 to \$21.40 per hour. Nesters continue to be paid as ACS employees. Throughout the day, the "nesters" may also report to ACS supervisors in the Civil and Insulation/Paint Departments. Overall, the DST section is comprised of approximately fifty-seven (57) multi-skilled employees and approximately twenty-four (24) "nesters."

The five zones are as follows: Zone 1, which includes the waste water treatment plant and the utilities, is supervised by Gene Higginbotham and Charles Monson. Leonard James is the planner assigned to Zone 1. Fifteen (15) multi-skilled employees are assigned to Zone 1. Three "nesters" are also regularly assigned to Zone 1: painter Bennie Ennis, a scaffold builder, and an insulator.

Zone 2 includes the urethane plants. Wayne Sharp supervises the fourteen (14) multi-skilled employees and eight (8) “nesters” that are assigned to Zone 2. The “nesters” include painter Bob Underwood, four (4) insulators, and three (3) scaffold builders. Neal Bullion is the planner assigned to Zone 2.

Zone 3 includes the Diols and Amines plants. J.J. Fontenot and David Egnew supervise the fifteen (15) multi-skilled employees that are assigned to Zone 3. Six (6) “nesters,” all insulators, are also assigned to Zone 3.

Zone 4, which includes the Polyol, Chlorine, and Aniline plants, is supervised by Mike Lamber. Larry Daigle is the planner for Zone 4. Eight (8) multi-skilled employees and three (3) “nesters,” a painter and two (2) insulators, are assigned to Zone 4.

Zone 5 includes the Carboxy and Acetylene plants. Geza Kovach supervises the seven (7) multi-skilled employees and four (4) “nesters,” all insulators, which are assigned to Zone 5. Mervin McConn is the planner.

C. Community of Interest

Neither the Act nor Board policy requires a petitioner to seek the optimum unit. The Board considers only whether the petitioned-for unit is an appropriate unit. *Black & Decker Mfg. Co.*, 147 NLRB 825, 828 (1964). As the Board noted in *Overnite Transportation Company*, 322 NLRB 723 (1996):

Section 9(b) of the Act provides that the Board ‘shall decide in each case whether ... the unit appropriate for the purposes of collective-bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.’ The plain language of the Act clearly indicates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit. For example, under Section 9(b), the same employees who may constitute part of an appropriate employer wide unit also may constitute an appropriate unit if they are a craft unit or are a plant wide unit. The statute further provides that units different from these three, or ‘subdivisions thereof,’ also may be appropriate. It is well-settled then that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining.”

Overnite at 723.

Therefore, the Petitioner is not required to seek the most comprehensive unit of employees unless a unit compatible with its requested unit does not exist. *P. Ballentine Packing Co.*, 141 NLRB 1103, 1107 (1963). Indeed, the Board has determined that it is not its function “to compel all employees to be represented or unrepresented at the same time or to require that a labor organization represent employees it does not wish to represent, unless an appropriate unit does not otherwise exist.” *Mc-Mor-Han Trucking Co.*, 166 NLRB 700, 701 (1967), quoting *Ballentine Packing Co.*, 132 NLRB at 925 (1961). As such, the Board first examines the petitioned-for unit to determine if it is an appropriate unit. “If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select

an appropriate unit that is different from the alternative proposals of the parties.” *Barlett Collins Co.*, 334 NLRB 484, 484 (2001). I note that the Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. *Barlett* at 484.

In establishing an appropriate bargaining unit, the Board considers whether the petitioned-for employees share a community-of-interest. Community-of-interest factors considered by the Board include (a) bargaining history, (b) the nature of employee skills and supervision, (c) the degree of functional integration, (d) frequency of contact and interchange with other employees, and (e) the terms and conditions of employment. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962); *Brand Precision Svcs.*, 313 NLRB 657 (1994); *Ore-Ida Foods*, 313 NLRB 1016 (1994), *aff’d* 66 F.3d 328 (7th Cir. 1995). The Board generally looks to the totality of the circumstances or the overall community of interest in making unit determinations. *Johnson Controls, Inc.*, 322 NLRB 669 (1996). Additionally, where a craft or departmental group is sought, the Board considers whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; and whether the employer assigns work according to need rather than on craft or jurisdictional lines. *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994).

The Petitioner in this case seeks to represent a unit comprising ACS section employees, but excluding electricians, insulators, operators, and multi-skilled DST employees. As noted above, the Employer contends that the only appropriate unit in this matter is one that includes all maintenance employees at BASF, including electricians, insulators, and DST employees because the employees share common interests and conditions of employment.

(a) Bargaining History and History of Operations

In determining the appropriateness of a bargaining unit, prior bargaining history is given substantial weight. Generally, the Board is reluctant to disturb a unit established by collective-bargaining that is not repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act. *Red Coats, Inc.*, 328 NLRB No. 28 (1999). Therefore, a party challenging the appropriateness of a historical unit has a heavy evidentiary burden. *Trident Seafoods, Inc.*, 318 NLRB 738 (1995). Further, “a mere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness.” *Trident* at 738.

The Petitioner has not enjoyed a history of collective-bargaining with the Employer. Indeed, the record evidence reflects that prior to January 1, 2005, the Employer did not exist in its present name or form. Nonetheless, the record reflects that dating back to at least 1990, the Petitioner has enjoyed a collective-bargaining relationship at BASF with various subsidiary companies of Turner Holding, the Employer’s predecessor in name, but not form.

It is clear from the record that the Petitioner’s bargaining history in the petitioned-for unit was interrupted in November 2004 when the Petitioner agreed to terminate its collective-bargaining agreement with IMC. Prior to November 2004, employees in the petitioned-for unit were paid a journeyman level hourly rate of \$19.15 per hour, plus an additional ninety-five cent

(\$0.95) per hour for health insurance. Additionally, the employees receive their insurance and benefits through the Petitioner. Presently, the Employer pays journeyman level employees in the petitioned-for unit an hourly rate of \$17.80, and provides its benefit package to the employees. Other than wages and benefits, the record evidence fails to show that the nature of the work performed by the Employer's ACS employees differ substantially from the work performed by employees represented by the Petitioner at BASF with the various subsidiary companies of Turner Holding.

Further, to the extent that the electricians and insulators are now employed by the Employer, they have not been historically represented by the Petitioner at BASF. Furthermore, as discussed in more detail below, neither the electricians nor the insulators share a community of interest so overwhelming with the petitioned-for historical unit that the unit must be broadened to include them. Indeed, like the operating engineers, both the electricians and the insulators each could constitute a separate appropriate craft unit.

Accordingly, I conclude that the record evidence reflects that the Employer has failed to show the existence of any compelling circumstances that warrant disturbing the historical bargaining unit.

Furthermore, in support of the appropriateness of maintaining a historical unit, the bargaining pattern at other plants of the same employer, although not controlling in relation to the bargaining unit of a particular plant, is a factor to be considered in unit determination. *Spartan Department Stores*, 140 NLRB 608 (1963). The record evidence reflects that in addition to BASF, the Petitioner has executed collective-bargaining agreements with various subsidiaries of Turner Industries Holding Company L.L.C. at other chemical facilities. The recognition clause in those agreements have substantially mirrored the recognition clause in the agreements the Petitioner has executed at BASF. For instance, at Dow Chemical, National Maintenance's June 7, 1999 agreement recognition clause included "all maintenance employees." The recognition clause is the same in agreements that IMC had with the Petitioner at PCS Nitrogen and Williams Olefins and Vulcan Chemicals and Honeywell International and Louisiana Generating and DSM Elastomers, all effective January 29, 2001. IMC's agreement with the Petitioner at Borden Chemicals and Plastics effective December 28, 1999 also included "all maintenance employees" in the recognized unit.

Thus, I conclude that the bargaining history in the petitioned-for unit weighs heavily in favor of a finding that the historical unit continues to be an appropriate unit for the purposes of collective-bargaining.

The Employer relies upon *The Boeing Company*, 337 NLRB 152 (2001) to support its contention that the petitioned-for unit should be enlarged to include electricians, insulators, and DST employees because the slight differences with the petitioned-for unit is outweighed by the factors they have in common. Notably, the petitioner in *The Boeing Company* did not have an extensive collective-bargaining relationship with the employer, and therefore, did not seek to represent a historical unit. Thus, bargaining history was not a part of the analysis utilized by the Board in reaching its decision in that case. Accordingly, I find the Board's conclusion in *The Boeing Company* was based upon facts inapposite to the instant case.

(b) Nature of Employee Skills and Supervision

All employees, ACS and DST, attend twenty-four (24) Occupational, Safety, and Health Administration (“OSHA”) required training courses and attend other training required by the Employer. All employees have access to the services of a training coordinator who helps place employees in skill training classes offered by the Associated Builders Contract (“ABC”) school. The Employer contributes \$30 for interested employees, both ACS and DST, to attend classes on their own time. ACS employees have voluntarily utilized such classes to upgrade their skill levels and to become certified in additional crafts within the ACS section. Specifically, painters have acquired the skills to become pipefitters and a carpenter acquired the skills to become a scaffold builder.

As a condition of employment, all ACS employees, except laborers, must score at least a seventy percent (70%) on the Employer administered skill assessment test to be certified in at least one skill classification. The skill assessment tests verify that a person is proficient in the job classification designated and is capable of performing the work. Once ACS employees possess at least one skill certification, they are not subject to any additional skill or psychological testing and are not required to be certified or licensed by the State.

The record reflects that the Employer recognizes differences between various crafts in terms of skills and responsibilities. Nonetheless, notwithstanding an ACS employee’s skill certification, the Employer makes its job assignments according to which employees are available and able to perform the work required to meet the needs of BASF. Thus, the record reflects that ACS employees often perform tasks which are not included in their skill certification. For instance, in the mechanical department, pipefitters do boilermaker work, boilermakers weld pipes, ironworkers fit pipes, and pipefitters put up structural steel.

In the Civil Department, scaffold builders generally erect scaffolds and build platforms that are used by and enable other employees to perform their work. The record evidence reflects that carpenters do re-bar work, run jackhammers, build forms, move furniture, build containment boxes, and unload trucks. Carpenters use claw-hammers and scaffold wrenches in the performance of their duties.

The record evidence discloses that laborers are not required initially to grade out on an Employer administered skill assessment test. To progress, however, laborers must score at least 70% on the skill assessment test. Laborers also complete a 40-hour HAZMAT training and work on the HAZMAT team cleaning up spills. Laborers do shovel work, perform clean-up, unload catalyst, and move furniture. Similar to laborers, the record reflects that cement masons perform general labor work and work with the HAZMAT team. Cement masons also finish cement, dig forms, dispose of paint waste, and refuel equipment.

The record evidence discloses that in the Insulation/Paint Department, insulators are generally responsible for installing and removing insulation at BASF. Only insulators perform asbestos abatement. Insulators also perform hole watch, fire watch and fireproofing, tear down scaffolds, do paint work, and move furniture. In the performance of their duties, insulators use hand saws, cordless rivets, drills, personal protective clothing on asbestos work, vacuums, and benders.

Like the insulators, the painters also perform hole watch and fire watch. Additionally, the painters do mostly “touch-up” painting. In the performance of their tasks, painters use brushes, rollers, and chipping guns. The painters also operate forklifts, perform warehousing work, and work in tool rooms.

In the Mechanical Department, ironworkers, welders, pipefitters, and boilermakers perform torque work, weld pipelines, change out valves and do outages. In the performance of their tasks, boilermakers use hand wrenches, impacts, and channel-locks, and millwrights use socket sets and shims.

In the Electrical Department, electricians receive their assignments via maintenance work orders. Electricians do preventive maintenance on switch gears, upgrades on wire pulls, change configurations and install loops in the control rooms, install cable trays (trays hold wires together), and change light bulbs. They install electrical tracing and contra-tracing (which is normally mechanical department work), and weld on brackets used to support cable trays. Electricians also do “small cap” work. Significantly, electricians perform tasks specialized to their craft, such as all electrical preventive maintenance on heavy switch gears rated 480 and above and the maintenance and operation of all 11 switch gears. In the performance of their craft, electricians use electric saws, tripods, squares, levels, hammers, center punches, drills, wire snips and volt meters. The record evidence reflects that instrumentation work is done by BASF.

The DST multi-skilled employees are primarily responsible for preventive maintenance and repairs at BASF. The DST employees report to their DST zone supervisor. DST mechanics are the highest skilled employees at BASF. Any employee interested in becoming a DST mechanic must possess at least one skill certification, which rules out apprentices and helpers. As part of the selection process, an employee must successfully complete an interview, undergo a pulmonary function test, and pass a psychometric test. The psychometric test is used as a barometer to indicate how an individual handles conflict resolution, makes decision, and works as a member of a team. Additionally, if the employee does not possess certifications in three job classifications, the employee must agree to attain the certifications by attending training classes on their own time. The employee must maintain a B average in the classes, and upon completion of the classes, complete six months of on-the-job training in the targeted skill classification.

Clearly, the DST employees’ skills and separate supervision weigh in favor of excluding them from the petitioned-for unit.

(c) Degree of Functional Integration

The Employer provides tools for all employees, both ACS and DST, but some employees may bring and work with their own personal tools. Employees have their own toolboxes. Since January 1, 2005, the Employer has begun requiring newly hired employees to have their own personal hand tools, such as tape measures, tri-squares, torpedo levels, and channel locks.

The ACS employees have shops in their respective departments where they perform tasks according to their crafts before deploying to perform “small cap” or maintenance work throughout BASF. ACS employees are assigned job tasks according to what is required to supply the needs of BASF. For instance, the record reflects that boilermakers perform the following tasks at BASF: blinding (isolating a pipe and working with end wrenches), removing

pipe, installing valves, rigging, tower work, bolt-up work, small fabrication, installing structural steel, unloading trucks, material handling, building scaffolds up to 20 feet, removing scaffolds, fiberglass work, applying resin on fiberglass wraps, some touch-up painting on spray applications, some catalyst handling, cane removal on reactors, hooking up air compressors and welding machines, and flight plants. Additionally, millwrights apply coatings to pump housings, insulators apply paint or coatings, painters build cabinet boxes, pipefitters apply paint or resin, and mechanics apply fiberglass resin. Further, laborers work with cement masons and carpenters. Thus, the record does reflect some overlapping of job functions.

At times, the Employer uses ACS pipefitters and boilermakers, who possess a single skill certification, to supplement DST crews when extra people are needed. Likewise, insulators, when working with DST employees, put on steam tracing and fill it in, pull pumps, and bolt up valves. Additionally, “nesters” periodically assist DST employees. DST employees, however, generally do not perform the skill work of the “nesters.” Occasionally, during “small cap” projects, DST mechanics may help ACS employees complete a final alignment on an installed pump. Further, during turnarounds, ACS employees and DST employees are required to work together to complete a project as soon as possible. During these turnarounds, ACS employees, regardless of skill certification, work as a group to complete the turnaround work as soon as possible. ACS employees, particularly Mechanical Department employees, may be assigned to work alongside DST employees during turnarounds. ACS employees, however, do not generally perform the exact same work as the DST employees during turnarounds. This occasional overlapping of trades involving lesser skilled duties does not preclude a separate unit. *Schaus Roofing*, 323 NLRB No. 146 (1997). Further, the use of teams composed of mixed skill employees does not make a separate unit inappropriate. *Burns & Roe Svcs. Corp.*, 313 NLRB 1307, 1308 (1994).

(d) Frequency of Contact and Interchange with Other Employees

ACS employees report to shops located in one of four departments: Civil, Insulation/Paint, Mechanical, and Electrical. However, their work is not confined to the shops. In the performance of their jobs, particularly “small cap” projects, they work throughout all the eleven plants located in the five zones at BASF. As such, they come into contact with and work around DST mechanics assigned to perform the maintenance support work in the zones. ACS employees generally do not, however, work with DST employees or perform the work of DST employees. As reflected above in the skills section, many of the ACS employees perform work in crafts other than the one in which they are certified.

In contrast to the ACS employees, DST mechanics report to one of five zones at BASF and generally do not perform work outside of a designated zone. Other than “nesters,” which are painters, scaffold builders, and insulators, DST mechanics have limited interaction with other ACS employees. Three (3) of the eight (8) painters are assigned to work in the zones alongside DST mechanics, and they report to DST supervisors. The record evidence does not reflect that the painters perform the same tasks as DST employees.

Scaffold builders, in performing their duties, have work-related contact with other ACS section employees as well as with DST mechanics. Scaffold builders are assigned to DST zones as needed and report to DST supervisors. Scaffold builders generally do not actually perform the same tasks as the DST mechanics, but during turnarounds, scaffold builders string pipe, bolt up

flanges, install blinds, and, as needed, are assigned to perform other work they are qualified to do.

Further, the record discloses that fourteen (14) of the twenty-three (23) insulators are assigned to work in zones with the DST employees and report to DST supervisors. Indeed, some of the insulators are permanently assigned to work in the zones, and insulators have shops in each of the DST zones.

Notably, although “nesters” are assigned to work in DST zones, they are not paid the same wage rate as DST employees. Nesters continue to be paid as ACS employees.

(e) Terms and Conditions of Employment

All employees, ACS and DST, park in the West Contractor Entrance and enter BASF through the same security point. All employees have identification badges that are used to enter BASF through the same gates. All employees use the same buses to travel to their designated work areas.

The Employer has fourteen (14) lunchrooms located throughout BASF that are accessible to any employee, ACS or DST. Employees generally eat lunch in the area in which they are working, yet, some employees return to a specific lunchroom to eat lunch. The record reflects that where employees eat lunch is a matter of geographic and personal preference. The same is true regarding restrooms.

Since December 20, 2004, all employees, ACS and DST, receive the same short-term and long-term disability insurance, Blue Cross/Blue Shield health insurance, dental and eye insurance, and 401(k) savings plan. All employees are also subject to the same discrimination policy and alcohol contraband policy. All employees express their concerns and present complaints to the same personnel representative. Site Manager Danny Price is the final authority for discipline of all employees, with all other supervisors having authority to recommend discipline. All employees receive the same flexible break periods, which are based upon crew assignments.

Notably, ACS employees do not receive the same vacation and holiday benefits as DST employees. ACS employees, regardless of skill certification, receive a maximum of one (1) week paid vacation after one year of continuous service. In contrast, DST employees receive two (2) weeks of paid vacation after three years of continuous service and three (3) weeks of paid vacation after ten years of continuous service. Further, ACS employees receive ten (10) non-paid holidays, but DST employees receive ten (10) paid holidays.

All employees, ACS and DST, are paid biweekly and receive an hourly rate according to their experience level. The specific rate of pay an ACS employee receives is based upon the employee’s experience level in the craft, which “A” signifies journeyman level at \$17.80 per hour. In contrast, DST mechanics receive an entry level pay rate of \$19.05, which progresses up to \$21.40 per hour based on the experience of the employee. Thus, there is a considerable difference in the pay received by ACS employees and DST employees.

Employees are not required to wear uniforms. All employees, ACS and DST, wear hard hats in various colors. Historically, ACS employees wore brown hardhats and DST employees wore gold hats. Likewise, the electricians normally wore yellow hardhats when they were employed by Davis Electrical Company, and the insulators wore green hardhats when they were employed by Petrin Corporation. Presently, whenever an ACS or DST employee needs to replace a hardhat, the color is determined by what color is available when the Employer places its order. Brown has been the color available in recent years.

The ACS employees have shops in their respective departments and the DST employees have shops in their respective zones. The DST shops, however, are better equipped than the ACS shops.

IV. SUMMARY

(a) Electricians

While the electricians' frequency of contact and interchange with other ACS employees and their receipt of similar terms and conditions of employment as the other ACS employees may favor including them in the petitioned-for unit, their historical independence and particularly specialized work are determinative in excluding them from the petitioned-for unit. Electricians perform all electrical preventive maintenance on heavy switch gear rated 480 and above. Such electrical maintenance work is a task specialized to the electrician craft. The record is void of any evidence that other ACS employees perform electrical maintenance on heavy switch gears rated 480 and above. To the extent the record reflects that other ACS employees perform electrical work, it is limited to work that does not require the expertise of a skilled electrician, such as installing cable trays to hold wires. The record evidence discloses and I find that the electricians could constitute a separate appropriate craft unit. Additionally, I note that the electricians have not been included in the bargaining unit historically represented by the Petitioner at BASF.

Thus, I conclude that the electricians are appropriately excluded from the petitioned-for unit.

(b) Insulators

Like the electricians, the insulators' frequency of contact and interchange with other ACS employees, their receipt of similar terms and conditions of employment as other ACS employees, and their degree of functional integration with other ACS employees favor including them in the petitioned-for unit. Particularly, the insulators are assigned to the same department as painters and perform substantially similar tasks as the painters. There are, however, nearly three times as many insulators (23) as there are painters (8). The record discloses that the insulators may do paint work, but the evidence does not reflect that painters perform any installation or removal of insulation. Indeed, the record evidence discloses that only insulators perform asbestos abatement. Additionally, the record reflects that the insulators and painters use different tools to perform their respective tasks. Further, fourteen (14) insulators are assigned to work with DST employees in zones, whereas only three (3) painters are so assigned. The determinative factor, however, is that the insulators, unlike the painters, have not been included in the bargaining unit historically represented by the Petitioner at BASF.

I conclude, therefore, that the insulators are appropriately excluded from the petitioned-for unit.

(c) DST

Contrary to the Employer's position at the hearing and in its brief, it is clear from the record that the DST employees, generally known as multi-skilled mechanics, constitute a clearly identifiable and functionally distinct craft group with common interests that distinguishes them from ACS section employees. *Johnson Controls*, supra at 672, citing *Del-Mont Construction Co.*, 150 NLRB 85, 87 (1965). DST mechanics are the highest skilled employees at BASF; primarily perform their work in designated zones; report to DST zone supervisors; do not perform the work of ACS "nesters"; wear gold hardhats; generally work five days per week/eight hours per day; wear pagers and are subject to mandatory overtime; receive overtime pay after eight hours per day; receive ten (10) paid holidays per year; receive up to three (3) weeks of vacation based upon the number of continuous years of service; and receive the highest pay at \$21.40 per hour. Furthermore, DST employees are not a part of bargaining unit historically represented by the Petitioner and prior to December 22, 2004, received a separate benefit package than the ACS employees.

In sum, the record evidence supports the Petitioner's claim that the DST employees are a clearly identifiable and functionally distinct group with common interests which are distinguishable from those of the ACS employees at BASF. I conclude, therefore, that the DST employees are appropriately excluded from the petitioned-for unit.

D. Construction Industry

In 1967, the Board noted that in the construction industry, many employees experience intermittent employment and may work for short periods on different projects for several different employers in a year. *Daniel Construction Co.*, 167 NLRB 1078 (1967). Therefore, the Board established the following eligibility formula to insure that all employees with a reasonable expectation of future employment with an employer engaged in the construction industry would have the fullest opportunity to participate in a representation election:

Accordingly, we find that, in addition to those employees in the unit who were employed during the payroll period immediately preceding the date of the issuance of the Regional Director's Notice of Second Election in this proceeding, all employees in the unit who have been employed for a total of 30 days or more within the period of 12 months, or who have had some employment in that period and who have been employed 45 days or more within the 24 months immediately preceding the eligibility date for the election hereinafter directed, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed, shall be eligible to vote.

Daniel at 1081.

In 1992, the Board confirmed the appropriateness of applying the *Daniel* formula when an employer has a relatively stable work force but also experiences sporadic employment patterns typical of the construction industry. *Steiny & Co.*, 308 NLRB 1323 (1992).

The Employer contends that it is not engaged in the construction industry, and that therefore, the *Daniel/Steiny* formula is not applicable in determining voter eligibility. Rather, the Employer contends that the maintenance services it provides at BASF, which includes rebuilding pumps, changing valves, swapping out reactor chains, dumping catalyst, internal work on towers, installing pipelines, building scaffolds, touch up painting, asbestos abatement, firewater leaks, underground works, form work, moving furniture and unloading trucks, is governed by OSHA standards for General Industry or Maintenance and is not construction work. The Employer's definition of construction work is limited to building a new facility and does not include making additions onto existing units. Further, the Employer contends that the "small cap" projects it performs are not considered construction because it does not involve driving pilings and hanging steel. Yet, for the Employer's most recent "small cap" project, the Employer "added some support steel and ran a 24-inch line", which was valued at \$200,000.

In contrast to the Employer's limited and narrow definition of construction work, the Board defines construction work in broad terms. For instance, the Board has held that the statutory definition of the "building and construction industry" encompasses "the provision of labor whereby materials and constituent parts may be combined on the building site to form, make, or build a structure." *Carpet, Linoleum and Soft Tile(Indio Paint and Rug Center)*, 156 NLRB 951, 959 (1966). Additionally, the Board has found that an employer who makes repairs to and replaces integral parts of an immovable structure is engaged in "construction" as used in Section 8(f) of the Act. *Garab d/b/a South Alabama Plumbing*, 333 NLRB No. 4 (2001). Moreover, the Board has established a set of factors it considers when determining whether an employer is engaged in the construction industry: (a) intermittent employment; (b) short periods of employment on different projects; (c) several different employers in one year; and (d) short layoffs due to material shortages or because the work is dependent on the work of various crafts. *Steiny and Co.*, 308 NLRB 1323 (1992).

The record evidence reflects that the Employer has a core workforce of approximately 210 employees that it maintains throughout the year. Clearly, the use of the *Daniel* formula "by no means excludes core employees, however that term may be defined; it simply enfranchises employees who, although working on an intermittent basis, have sufficient interest in the employer's terms and conditions of employment to warrant being eligible to vote and included in the unit." *Steiny* at 1328. Indeed, if an employer has an entirely stable work force, then no employees will be eligible by virtue of a *Daniel/Steiny* formula. *Brown & Root*, 314 NLRB 19 (1994) citing *Steiny* at 1327-1328. The record discloses, however, that in addition to its core workforce, the Employer has employed "turnaround employees" on an intermittent basis for short a period of employment. In February 2005, the Employer hired approximately one hundred (100) "turnaround employees" for a turnaround project at BASF that lasted about two weeks. Most of the "turnaround employees" were released at the conclusion of the project and were free to seek employment with a different employer. Historically, nearly twenty (20) turnarounds are performed each year at BASF that last an average of two weeks. Thus, the record shows that the Employer employs "turnaround employees" on an intermittent basis for short periods of time and that the "turnaround employees" are laid off when the work is complete. Accordingly, I find that the Employer is engaged in the building and construction industry as defined by the Board.

The Employer further contends that even if it is involved in the construction industry, the *Daniel/Steiny* formula does not apply because the “turnaround employees,” as temporary employees, do not have a reasonable expectation of future employment or possess a substantial interest in working conditions. Site Manager Danny Price testified that “turnaround employees” are told that their employment is for a short and definite duration and that the Employer does not necessarily re-hire the same employees for turnarounds. Price acknowledged, nonetheless, that the Employer’s preference is to re-hire turnaround employees that have worked at BASF due to the time it takes to process new employees. Additionally, the evidence reflects that 20 to 30 turnarounds per year have been performed historically at BASF, which further increases the “turnaround employees” likelihood of future employment. Moreover, the evidence discloses that as recently as February 2005, the Employer has hired “turnaround employees” to replace poor performing employees in its core workforce or to fill vacancies. Accordingly, the record establishes and I find that “turnaround employees” can reasonably expect to be re-hired when they are released upon the completion of a project. Indeed, I find that the fact pattern in this case is similar to the fact pattern considered by the Board in *Wilson & Dean Construction Co.*, 295 NLRB 484 (189).

In *Wilson & Dean*, the employer was engaged in commercial and industrial construction. The Employer had an 8(f) collective-bargaining relationship with the union for approximately thirty (30) years. Pursuant to a collective-bargaining agreement, the employer obtained the employees it needed for its construction projects from the union’s hiring hall. The Employer properly terminated its collective-bargaining agreement with the union, and afterwards, discontinued using the union as the source for its employees. The union filed a petition to represent employees in the unit as set forth in the expired collective-bargaining agreement. The Board noted, “[u]nder Deklewa, an employer can terminate its collective-bargaining relationship after its 8(f) contract with the union has hired. This does not diminish the short-term construction employee’s substantial interest in the employer’s conditions of employment or change the existing electoral mechanism for expressing representation desires.” *Wilson & Dean* at 484 -485. The Board concluded that “the employer’s former employees who meet the Daniel eligibility requirements have a reasonable expectation of future employment with a substantial continuing interest in the employer’s conditions of employment and are eligible to participate in the election.” *Id.*

Further, the record evidence does not reflect that the terms and conditions of employment of “turnaround employees” are any different than those of the Employer’s core workforce. Rather, the record reflects that turnaround employees, like ACS employees in the core workforce, must possess at least one skill certification. Thus, I conclude that turnaround employees have sufficient interest in the Employer’s terms and conditions of employment to warrant being eligible to vote and included in the unit.

Accordingly, eligible to vote in this matter are all unit employees that have been employed by the Employer for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and who have been employed 45 working days or more within the 24 months immediately preceding the date of this Decision and Direction of Election, and who have not been terminated for cause or quit voluntarily prior to completion of the last job for which they were hired.

IV. THE UNIT

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I shall direct an election in the unit as set forth below:

All boilermakers, carpenters, scaffold builders, ironworkers, laborers, millwrights, painters, pipefitters, welders, and cement masons employed by the Employer at its BASF Geismar, Louisiana project; excluding all electricians, insulators, DST employees, office clerical employees, guards, professional employees and supervisors as defined in the Act.

V. VOTER ELIGIBILITY

In addition to those employees in the unit who were employed during the payroll period immediately preceding the date of this Decision and Direction of Election, all employees performing work in the unit set forth above are eligible to vote if they have been employed at BASF for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and who have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election hereinafter directed, and who have not been terminated for cause or quit voluntarily prior to completion of the last job for which they were hired.

VI. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Baton Rouge Building & Construction Trades Council, AFL-CIO.

VII. LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394

U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the New Orleans Regional Office, 1515 Poydras Street, Suite 610, New Orleans, Louisiana 70112-3723 on or before **May 17, 2005**.

VIII. NOTICE POSTING REQUIREMENT

According to Board Rules and Regulations, Section 103.20, Notice of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed.

IX. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **May 24, 2005**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.

Dated this 10th day of May, 2005, at New Orleans, Louisiana.

/s/ [Rodney D. Johnson]
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Classification Index Codes: 440-1760-9101
440-1760-99101-5000
460-5067-7050

Date of Issuance: 05/10/05